

201101031



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OCT 13 2010

Uniform Issue List: 408.03-00

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

S E: T: E P: R A: T2

**Legend:**

Taxpayer A	=	XXXXXXX
IRA X	=	XXXXXXX XXXXXXX
Account Y	=	XXXXXXX XXXXXXX
Financial Institution F	=	XXXXXXX
Financial Institution G	=	XXXXXXX
Amount K	=	XXXXXXX
Date 1	=	XXXXXXX
Date 2	=	XXXXXXX
Date 3	=	XXXXXXX
Physician S	=	XXXXXXX

Dear XXXXXXXX:

This is in response to your request dated April 20, 2010, as supplemented by correspondence dated July 23, 2010, in which you request a waiver of the 60-day rollover requirement contained in section 408 (d) (3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A is \*\* years old. Taxpayer A maintained Individual Retirement Account IRA X with Financial Institution F. Taxpayer A represents that Amount K was distributed

from IRA X on Date 2. Taxpayer A asserts that her failure to accomplish a rollover of Amount K within the 60-day period prescribed by section 408 (d) (3) of the Code was due to a medical condition which impaired her decision making ability. Taxpayer A represents that Amount K was deposited in Account Y at Financial Institution G on Date 3. She asserts that Amount K remains in Account Y at Financial Institution G and has not been used for any other purpose.

On Date 1, Taxpayer A was hospitalized for bleeding in her brain. On Date 2, approximately one week later, she contacted Financial Institution F by telephone and made a request to have Amount K transferred to her non-IRA account at Financial Institution G. On Date 3, Amount K was transferred to Account Y. Taxpayer A represents that she did not remember requesting the transfer of Amount K and only became aware of the transaction after she received a Form 1099-R.

Taxpayer A has submitted documentation reflecting that she was diagnosed with memory loss due to a right frontal hemorrhage on Date 1. She submitted a letter from Physician S, her neurologist, which documents her state of mental health during the 60-day period. Physician A also asserts that Taxpayer A was temporarily incompetent during this period.

Based on the facts and representations stated above Taxpayer A requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408 (d) (3) of the Code regarding Amount K.

Section 408 (d) (1) of the Code provides that, except as otherwise provided in section 408 (d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408 (d) (3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408 (d) (3) (A) of the Code provides that section 408 (d) (1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408 (d) (3)).

Section 408 (d) (3) (B) of the Code provides that section 408 (d) (3) does not

apply to any amount described in section 408 (d) (3) (A) (i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408 (d) (3) (A) (i) from an IRA which was not includible in gross income because of the application of section 408 (d) (3).

Section 408 (d) (3) (D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408 (d) (3) (I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408 (d) (3) (A) and 408 (d) (3) (D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408 (d) (3) (I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408 (d) (3) (I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation Taxpayer A submitted is consistent with her assertion that her failure to accomplish a timely rollover of Amount K was caused by her medical condition which impaired her decision making ability during the 60-day period.

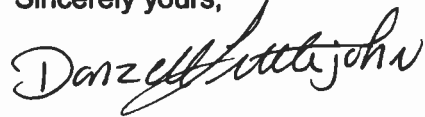
Therefore, pursuant to section 408 (d) (3) (I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount K. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount K into a rollover IRA. Provided all other requirements of section 408 (d) (3) of the Code, except the 60-day requirement, are met with respect to such contribution, contributing Amount K into one or more IRAs described in Code section 408(a) will be considered a rollover contribution within the meaning of section 408 (d) (3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto. This letter expresses no opinion as to whether IRA X satisfied the requirements of section 408 of the Code.

This letter is directed only to the taxpayer who requested it. Section 6110 (k) (3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact XXXXXXX, ID # \*\*\*\*\*, at (\*\*\*)  
\*\*-\*\*\*\*. Please address all correspondence to XXXXXXX.

Sincerely yours,

A handwritten signature in cursive script that reads "Donzell Littlejohn".

Donzell Littlejohn, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose